

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DONALD GRIFFIN,

Petitioner,

v.

9:09-CV-1334

SUPERINTENDENT,

Respondent.

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THOMAS J. McAVOY,  
Senior United States District Judge

**DECISION & ORDER**

**I. INTRODUCTION**

This *pro se* petition for a *writ of habeas corpus* pursuant to 28 U.S.C. § 2254 was referred to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.4. In his January 31, 2013 Report-Recommendation and Order, *dk. # 56*, Magistrate Judge Hummel recommends that the petition be denied for non-exhaustion, *id.* pp. 10-13, and for lack of merit. *Id.* pp. 13- 17. Magistrate Judge Hummel also recommends that no certificate of appealability be issued. *Id.* Petitioner filed objections to the Report-Recommendation and Order. *See* *Obj.*, *dk. # 57*.

**II. STANDARD OF REVIEW**

When objections to a magistrate judge's report and recommendation are lodged,

the district court makes a “*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1)(C); see also United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir.1997)(The Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate's findings.). After reviewing the report and recommendation, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C).

### III. DISCUSSION

Having considered Petitioner’s objections and reviewed the issues *de novo*, the Court determines to accept Magistrate Judge Hummel’s recommendations for the reasons stated in the January 31, 2013 Report-Recommendation and Order.

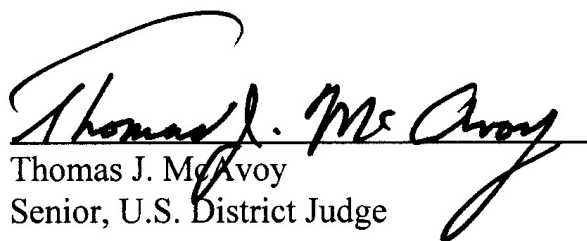
### IV. CONCLUSION

Therefore, the Court **ACCEPTS and ADOPTS** the recommendations made by Magistrate Judge Hummel in the January 31, 2013 Report-Recommendation and Order, dkt. # 56. For the reasons set forth therein, the petition is **DENIED and DISMISSED**.

The Court also finds that the petition presents no questions of substance for appellate review, and that Petitioner has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see Fed. R. App. P. 22(b). Accordingly, a **certificate of appealability will not issue**.

**IT IS SO ORDERED**

Dated: March 18, 2013

  
Thomas J. McAvoy  
Senior, U.S. District Judge